

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

GLASS MANAGEMENT SERVICES, INC.	:	
	:	
Plaintiff,	:	CIVIL ACTION NO: 4:09-cv-1653
	:	
v.	:	
	:	
HORSEHEAD CORPORATION	:	<i>District Judge David D. Dowd, Jr.</i>
	:	<i>Magistrate Judge George J. Limbert</i>
	:	
Defendant.	:	
	:	

**DEFENDANT HORSEHEAD CORPORATION'S REPLY TO PLAINTIFF'S
MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS**

Plaintiff's Complaint, which Plaintiff has pled and self-designated as two counts, attempts to set forth two separate causes of action for breach of contract. Count I appears to allege a breach of the three, written service contracts under which Project Management Services was to perform industrial cleaning services for Horsehead. Count II, as more fully explained in Plaintiff's Memorandum in Opposition, appears to allege that Plaintiff is entitled to the loss of goodwill allegedly occasioned by Horsehead's termination of the contracts.

Plaintiff has now admitted that its Count Two is merely a separate component for damages. "Plaintiff's complaint alleges defendant's bad faith breach of the service contracts lead to the loss of plaintiff's goodwill during negotiations with Inland." (Pltf's Mem. pg. 3). However, a request for additional damages is simply not a separate cause of action, and calling it a separate cause of action does not make it so. *See e.g., Slusher v. Ohio Valley Propane Servs.*, 177 Ohio App. 3d 852, 861 (2008) (holding that attorneys fees, punitive damages and loss of consortium claims do not constitute separate causes of action under Ohio law); *Hughes v. Am. Tripoli, Inc.*, 2006 U.S. Dist. LEXIS 34469, *6 (M.D. Fla. May 30, 2006) (granting motion to

dismiss and striking paragraphs styled as separate cause of action as they were simply a request for damages). As Count Two is redundant of Count One and does not state a separate cause of action on a separate contract but is merely a request for further relief arising out of the breach alleged in Count One of the Complaint, it should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

Dated: August 5, 2009

Respectfully Submitted,

BUCHANAN INGERSOLL & ROONEY PC

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CERTIFICATION

I hereby certify that on August 5, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be serviced by regular U.S. Mail.

This case has not yet been assigned to a case management track by this court and no page limits for motions pursuant to Loc. R. 7.1(f) have been assigned

Dated: August 5, 2009

Respectfully Submitted,

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